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ADDRESS OF GOVERNOR EDWARD F. DUNNE OF ILLINOIS AT THE GOVERNORS' CONFERENCE BOSTON, MASS., AUGUST, 1915.

The Abolition of Capital Punishment.

In 1901, there was convicted of murder, in the city of Chicago, one Synon; he was condemned to die.

His case was appealed to the Supreme Court which reversed the lower court, because of objectionable remarks by the trial judge while the accused was on the witness stand.

Synon's second trial was held in the court over which I had, at that time, the honor to preside. He was acquitted after many reputable men had testified that he was four miles from the scene of the crime when it was committed.

This man was saved by a few harsh and prejudicial words of the judge, before whom he was first tried; and thus the errors, upon which he was able to appeal, became the means through which it was possible for him to establish his innocence. Only those words, which the court had committed an error in uttering, stood between him and the death penalty, between justice and the cruel tragedy of which my State would have been guilty.

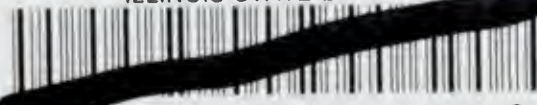
Only a year or two ago, Ray Pfanschmidt, a young man living near Quincy, in my State, was accused of murdering his father, mother, and sweetheart, and of burning the house over their dead bodies. He was convicted of the murder of his father and sentenced to the gallows. Fortunately, he was able to appeal to the Supreme Court where a new trial was granted. A change of venue was taken and, in another county, he was acquitted.

A few days ago, one of our most honored judges, a man who has served our judiciary with splendid efficiency, resigned and retired, I am told, a disappointed and broken hearted man. For nearly twenty years he has carried a growing burden of suspicion that two men he had sentenced to State prison for life were innocent. Twenty-two of the judges of Cook County, including this judge, have stated to me, in writing and by word of mouth, their opinion that these two men were not guilty. The records of the case, viewed in the dispassionate light of to-day, reveal strikingly flimsy evidence on which to convict of murder.

Our Legislature this year enacted a law making it possible to parole life men after they have served twenty years; and the first act under this new law was the release of these two men.

What a tragedy! What a stain upon Illinois' name would have been the execution of these two men if they had been sentenced to death. Even the ages could not have removed it.

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It was such cases as these that have set me to thinking and investigating and my conscience, reinforced by the results of my inquiries, has made me a firm believer that capital punishment is wrong in theory and in act.

Before our last General Assembly I urged repeatedly the repeal of our capital punishment code, recommending it in my message and pleading for it in person before both houses of the Legislature.

The repeal bills failed, but I am quite sure the agitation they stirred up has had a marked and beneficial effect upon the State's conscience and has aroused and formulated a new public opinion. The press and the leaders among men and women engaged in the great humanitarian enterprises of our State rallied to the measure with a wonderfully inspiring spirit.

The principal argument advanced, in support of capital punishment, is that it acts as a deterrent. If I could convince myself that this were true, my views might be different. If society needed this awful penalty to protect itself, on the theory of self-defense, there might be some force and logic in the argument of those who favor its retention, because society collectively has the same right that a man individually has to protect its life.

I doubt if it ever did deter. I am certain that it does not now deter. On the contrary, all the evidences of history and of statistics are that it never did deter. We find on consulting our history that, in the days when the penalties for crime were the most severe, crimes themselves were the most numerous.

In England, in 1699, there was an agitation for penal reforms. At the beginning of the eighteenth century, Pope Clement XI established a juvenile prison. Over its doors appeared these words: "Clement, XI, Supreme Pontiff, reared this prison for the reformation and education of criminal youths and to the end that those who, when idle, had been injurious to the State, might, when better instructed and trained, become useful to society." Inside the prison, printed on a slab, were these words: "It is little use to restrain criminals by punishment unless you reform them by education."

Reforms lagged until 1728, when they were again urged with force. Chancellor Blackstone, in 1765, published his commentaries and laid before the English people the utter folly of awful and extreme penalties. Penal reform in our English system may be said to have begun then.

But even at the opening of the nineteenth century, the English criminal code was excessively rigid and bloody.

Parliament, in March, 1816, repealed the death penalty for larceny. At that time, George Barnett, a boy of ten years, under conviction of larceny, was in Newgate prison awaiting execution.

Punishment by death at one time in England could legally be inflicted for more than 200 different offenses. It was a capital offense to pick a man's pocket, to steal five shillings from a shop, to catch and steal a fish, to cut down a tree, to harbor an offender against the excise laws, to steal a sheep, or an ox or a horse, to commit larceny of almost any kind. Seventy-two thousand thieves were hanged, at the averaged rate of 2,000 a year, during the reign of Henry VIII. Some offenses at that time were punishable by

boiling to death. One morning during the reign of George III, before the rising of the sun, in the city of London, twenty persons were executed for stealing from the person. In the year 1785, ninety-seven persons were executed in London for stealing from a shop to the value of five shillings.

Often the prisons were full of children, many under the age of ten, who had been informed upon for theft.

Neither the old Mosaic theory of retribution and revenge—an eye for an eye and a tooth for a tooth—neither that, nor degradation, whipping, branding, hanging, maiming, chambers of torture, broken bodies on the wheel, bones fractured on the rack, arms and legs suspended with heavy weights attached, the burning of the flesh and the searing of the skin with white hot iron, roasting the human bodies on slow fires, burial alive, tossing of the culprit into a den of wild beasts, pouring molten lead into the ears, placing men's faces upward to the flaming sun, tying by the seaside, so that drowning would follow the rising tide—all these have been tried and victims of these indescribable horrors have given up their lives by the thousands, and yet criminals did not become extinct, and I believe history will demonstrate that crime increased rather than decreased under these frightful penalties.

I am not going to attempt to support my arguments by elaborate quotations from statistics. There are certain figures, however, which are rather significant, if not conclusive. I refer to the statistics of the Federal Census bureau of 1910, with reference to the effect of the death penalty upon the commission of murder. These statistics show that in twenty-one of the states having the highest number of homicides per capita in the population, there is not a single state that has abolished capital punishment. These twenty-one are those which have enforced the death penalty from the time of their organization. Following these twenty-one states come three states, Illinois, Maryland and Kansas, all having the same number per capita of homicides. Of these states, Kansas has abolished the death penalty; Illinois and Maryland have retained it.

Let us now consider the twenty states which these statistics show to have the lowest number of homicides per capita. *Among these twenty, are all the states but one (Kansas) that have abolished capital punishment.* The Federal statistics, to my mind, show that capital punishment has failed to act as a deterrent, and that in the states where it has been abolished, there is a less per capita of homicides than in the states where it has been retained. Go into Wisconsin, a state which borders upon ours. We, in Illinois, have had capital punishment since we were admitted to the Union, and, even while it was a territory, capital punishment was inflicted for murder. Wisconsin abolished this penalty years ago. Yet homicides per capita are almost twice as many in Illinois as in Wisconsin.

Up to 1913, six states had abolished capital punishment, Washington followed in that year. The United States statistics of 1910, show that five of these are among the twenty with the lowest per capita of homicides, each with a percentage less than .08 in each 10,000 of population. The other noncapital punishment state—

Kansas—had the same per capita of homicides as Illinois and Maryland, both capital punishment states.

Illinois was disgraced by 651 homicides in 1910, after a century of enforcement of capital punishment, while in Wisconsin, where it had been abolished, the homicides have not been much over fifty per cent, per capita, of those committed in Illinois.

If protection of society, if reformation of the criminal, if segregation of an anti-social element of our population, if either of these is the end or all of them are desired, then the separation from society of our criminals in decent, humane, wholesome, and Christian surroundings, will accomplish all that we, as children of one Father, have a right to accomplish. He has not delegated to us further power or right over our fellows. The Holy Scriptures, so often quoted in support of retribution, commands the human race not to kill.

If it is wrong for one man to kill another, if it is a crime for three men to kill one man, or for a dozen men to kill one man, if it is a crime for one man to rape, is it not equally criminal for twenty men to kill one man or to commit this other unmentionable crime? The increase in number of participants and their organized embodiment, do not make it a right or a virtue for them to kill or to rape.

Christianity long ago revoked the doctrine of a tooth for a tooth, and an eye for an eye. Christ prayed the Father, as He saw the thief hanging by His side; "Father, forgive them, for they know not what they do." Christ himself was suffering the lingering tortures of death at the hands of passion and fury. He did not seek the destruction of those who were murdering Him and the thief by His side, but He prayed that they should see and know God's truth.

Verily, God himself has reserved to Himself the final penalty for the sins of His children.

Criminals have been divided into three classes; first, the instinctive criminal; second, the habitual criminal; third, the occasional or single offender.

The instinctive criminal cannot adjust himself to orderly and regulated environment. He is anti-social and alien in all his attributes, and is incapable, by reason of physical, mental, or moral deficiencies, the nature of which we do not fully understand of getting out of a bad into a good environment or of improvement by training or education. Such men we have no more right to murder than we have to kill off the insane, the feeble-minded, the tuberculous, and others whose presence among us entails upon us responsibilities and financial burden.

The habitual criminal—the criminal by acquired habit—has developed out of environment and the social status in which he finds himself. Many of our crimes against both the person and property are the results of social mal-adjustments and conditions for whose existence society itself is solely to blame. Society has no right to the exercise of retribution—to the life of the offender—when it has denied him his natural and inalienable rights and, in fact, has com-

pelled him to exist and develop in the midst of pinching poverty, degrading squalor and degenerating contaminations.

Some of the most frightful of the crimes by juveniles in our great cities may be traced directly to an environment which could not be expected to produce anything but the very worst.

Society itself becomes criminal when it seeks, by violence and the blood of its victims, to right a wrong committed against it by such product of its own neglect. For this class we cannot conceive of execution performing any function. The hanging of hundreds or thousands of them, even the massacre of their young, would not decrease the crime that springs from the slums and the tenements, so long as the slums remain under the tolerance of an intelligent society.

The third class includes the occasional or single offender—the normal individual, who, through stress of circumstances or force of temptation, or the unreasoning and unthinking pressure of passion, commits an evil deed. For him reformation is probable. He may be made a useful citizen, and society benefited by sparing his life.

Among the first and third classes there is no serious premeditation on the outcome of their acts. The first class commit crime because they cannot help it. Frequently they make little or no effort to conceal their tracks. They exhibit a certain form of precaution which is inherent in the instinct of self-preservation and not the intelligent mental systemization of concealment or alibi. The third class commit crime during stress or in passion; consequently they are not in a frame of mind to apprehend the effects of their conduct. The penalty, no matter how great or how severe, would deter neither of these types.

The other class—the habitual criminal, has probably tasted punishment, but notwithstanding how much has been inflicted upon him, he continues to return to his old ways, because society affords him no other. Consequently, the penalty has not deterred him. Punishment will not cure him, nor will it prevent, nor even retard others of his type from entering upon a like career.

So we are thrown back upon our only right and duty—that of protecting ourselves and society by a process of segregation, both of those who commit crime and of those who, under our modern scientific light, we are able to predict almost to a certainty will commit crime.

Another evidence that execution is not effective is afforded in the records of lynchings and mob violence. Whether these have occurred in the North or in the South, they have not had any appreciable influence in reducing crime of the character which aroused public fury. Lynchings and burnings at the stake are but too common to-day.

What community has profited by a reduction in crime following a lynching?

Punishment for political or religious belief has never hindered its progress. Christianity did not cease its remarkable strides because its early believers were thrown to the lions or were made torches to illuminate a Nero's festival; nor has political liberty been throttled by the execution of reformers. Fear of death has not

halted the plans or dimmed the faith of good men who understood the consequences of their course. Why, then, should it affect men of evil minds who know nothing but evil and do it as naturally as good men do good?

My point is simply this, that in no age and among no people does history record that threat or danger of death has stopped men or women, bent on the accomplishment of some purpose; whether it has been good or bad, the conservation of human happiness and life or its wanton destruction. They have assumed all the chances and when they have failed, they have gone to their execution unflinching. This has been as true of the murderer as of the martyr.

Psychologists are trying to unfold to us the mysteries of what they call the subconsciousness. The operations of our imitative and imaginative spheres, we now fall back upon to explain, in a way, many things which heretofore have baffled solution. We frequently remark that crime goes in waves and suicides by epidemics. Even epilepsy is said to contain an element of imitation and habit; for in a class of these unfortunates, seizure, in one, will often be followed by seizures in many or all of them. There is a contagion of noise, of restlessness and disturbance, just as there is contagion of disease. It sweeps from individual to individual and soon sways a mob.

Who can say that an exhibition of mob passion and violence, in which property has been destroyed and life has been taken, has not irreparably damaged the whole community. Those of us who have studied a mob have been struck by its personal appeal, and we have seen one after another drawn into the vortex and taking part in the destruction without cause or reason. We have seen the mob spirit intensified and inflamed beyond expectation of control by the first deed of murder. Like the animal who becomes ferocious when he tastes blood, so the human, when aroused, becomes an unrestrained brute at the sight of blood. Men who watched the riots of a few years ago in the Capital of our State have told me that not until the first life had been sacrificed, did the mob lose all restraint and enter upon a wholesale, extended and unreasoning debauch of fire and murder, which could not be stopped, except by great show of military power.

Of a similar type—perhaps invisible—are the effects of a legal execution upon the community. Its first and most debasing influence is upon those who witness it. The crowd about the scaffold is more fearful to contemplate than the struggles of the human wretch dangling to the rope. The morbid crowds, that stand without, compensate the absence of vision by stimulated mental pictures and imagining which are equally degrading. The whole city for weeks feels a depression that is, in the last analysis, humiliation and remorse.

Too much importance cannot be attached to the argument that the capital punishment law operates against justice. How many murderers go free because juries will not inflict the death penalty, though they have sworn to follow the evidence and the law and have declared themselves not to be opposed to it.

While it is true that the accused is entitled to his liberty, if there is doubt as to his guilt, it is equally true that many a jury is certain of his guilt, but lacks that degree of conviction which will support a decree of death.

Thus the tendency is always towards leniency and the number of judgments of deaths falls to an almost negligible quantity. What better evidence could we have of the presence of a widespread and deeply rooted conviction that the death penalty is wrong. Men say they believe in it, but they are exceedingly slow to apply it when they have the opportunity. Conscience—that still small voice, that controls the human mainspring—rebels and they refuse to go counter to its admonitions.

Here occurs another argument against this penalty. After a period of leniency, in a community, some atrocious deed is done or there is a wave of crime, so-called. The populace becomes excited and demands the rigid enforcement of the law to the very letter; for recent events it calls for blood. The newspapers and the demagog grow vociferous and mass meetings pass resolutions. The wheels of the law are speeded up and the first one or two accused of murder are sacrificed, after which affairs assume their old ways. Such instances are of common knowledge. They demonstrate very clearly that jurors trying men for their liberties and lives are not always dominated solely by their own conscience, the testimony and the law, but are influenced by extraneous forces, however unconscious they may be of it or careful they may be to act honestly.

Concluding, I want to call your attention to the attitude of those great spirits and hearts of our American leaders of humanity. Our literature, our science, our art, our religion teem with righteous protest against the so-called legal execution of our fellow men. Those who have led us into the clearer lights of duty and responsibility have, without exception, plead for the abolition of this hideous disgrace and bloody inheritance from a brutal age.

Lincoln wrote: "God helping me, I will never sign the death warrant of any man so long as I live"; Bryant, "I am heartily with you in your warfare against the barbarous practice of punishment by death"; Whittier, "I do not regard the death penalty essential to the security and well being of society. Its total abolition and the greater certainty of conviction which would follow would tend to diminish rather than increase the crimes it is intended to prevent"; Longfellow, "I am and have been for many years an opponent of capital punishment"; Horatio Seymour, "I am decidedly in favor of the softening of the criminal code"; Dr. Benjamin Rush, "The power over human life is the sole prerogative of Him who gave it. Human laws, therefore, are in rebellion against this prerogative when they transmit it to human hands"; Father Matthew, "I have been thirty years in the ministry and I have never yet discovered that the founder of Christianity has delegated to man any right to take away the life of his fellow man"; Henry Ward Beecher, "In our age there is no need of a death penalty, and every consideration of reason and humanity pleads for its abolition"; Wendell Phillips, "The gallows should be abolished altogether."



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I might continue to quote for a day, but leave these thoughts with you as examples of the aspirations of the leaders of humanity.

The cold-blooded enforcement of this awful penalty, under the forms of law, is brutal and abhorrent and wrenches the decent sensibilities of every public official who, by an act or omission, is required to participate in it, including the jurymen who imposed the penalty, the judge who directs its execution, the Governor who refrains from clemency, the sheriff who superintends the hanging, the miserable unknown human tool who cuts the rope. It degrades and demoralizes, depresses with remorse and humiliation the community in which it takes place. It lowers the level of the finer instincts and is fraught with the ever present danger that a life is being sacrificed to the fallibilities of the human mind and conscience.

As the executive of a great commonwealth, I come before you to-day, the governors of sister states, to plead with you to give this subject your honest thought and faithful consideration.

The tendency of modern government in highly civilized communities is slowly and surely toward the abolition of capital punishment. Italy, Holland, Switzerland, Belgium, Portugal and Roumania have abolished it. In the United States it has been abolished in Kansas, Maine, Michigan, Minnesota, Oregon, Rhode Island, South Dakota, Washington and Wisconsin.

Ought we have still upon our statute books the penalty that takes human life under the forms of law or keep pace with the progress of events, particularly as the records show that it has ceased, if it ever did, to act as a deterrent of grievous offenses?